IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2471 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

V I PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2471 of 2001

MR IS SUPEHIA for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1 & 2

MR BP BHATT for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/10/2001

ORAL JUDGEMENT

1. Rule. Mr. P.R.Abichandani, ld. AGP appears and waives service of Rule for Respondent nos. 1 & 2 and ld. Counsel Mr. B.P.Bhatt appears and waives service of Rule

for respondent no.3.

2. In this petition, by invoking jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, direction or order and to grant following main reliefs :-

(A) Quashing and setting aside the orders dated 5.6.2000 (Annex.F) and dated 10.11.1987 (Annex.E) and direct the Respondents to treat the petitioner as if these orders were not passed and to pay him all the benefits on that basis;

(B) Directing the Respondents to treat the services of the petitioner as Technical Assistant as regular from the date of appointment, that is, 17.2.76 and to extend him all the benefits on that basis including further promotion;

(C) If prayer (B) is not granted then to direct the Respondents to regularise the services of the petitioner as Technical Assistant from 17.2.1976 and to grant him all benefits accordingly.

(D) xxx xxx xxx

(E) xxx xxx xxx

(F) xxx xxx xxx

3. As per the facts in brief, the petitioner is working as Technical Assistant under Respondent No.3, though by the order dated 5.6.2000 he has been reverted to the post of Computor. Initially, the petitioner was appointed as a Computor on 17.12.1969 (Annex.A) and thereafter he was taken up as Technical Assistant by the same department vide order dated 15.2.1976. It is submitted that thereafter he was appointed as Additional Asstt. Engineer vide order dated 23.12.1981. Fortunately for the petitioner, he was again issued order of promotion to the post of Overseer vide order 11.4.1983. However, the petitioner did not accept the said post of Overseer since it was a lower post than that of Additional Asstt. Engineer. It is further submitted that vide order dated 10.11.1987, the petitiner came to be reverted to the post of Technical Assistant from the post of Works Supervisor which was equivallent to the Addl. Assistant Engineer. The order of reversion came tobe passed as the department realised that the order appointing the petitioner on the post of Technical Assistant was irregular and was appointed in violation of basic recruitment rules and that petitioner was not qualifified for the said post.

4. Ld. counsel Mr. Supehia for the petitioner has submitted that the petitioner atleast should be asked to continue on the post of Technical Assistant where he is working today. It is the say of the petitioner that because of administrative exigency and to meet with the requirement of the department, certain appointments were made by the Water Resources Department and other agencies related to the irrigation activities in the State of Gujarat. Para-15 of the petition is specific to the effect that several such irregular appointments were regularised by Respondent No.1 State or by the concerned department.

5. Affidavit-in-reply filed by the Respondent State says that the petitioner was appointed as Computor in Kadana Project Circle and thereafter, he was made Technical Assistant on the vacant post though he was not satisfying necessary norms for the post of Technical Assistant. Appointment of the petitioner was conditional and temporary and, therefore, the petitioner has no right to continue on the said post. Ld. AGP Mr. Abichandani has pointed out that to get appointment as Computor, one should satisfy the following quoted criterias :-

> "Appointment shall be made by nomination from amongst the candidates who -
> (a) are not more than 25 years of age, and
> (b) have passed the S.S.C. Examination with Mathematics or an equivallent examination recognised by Government.
> Provided that preference may be given to the candidates who possess practical experience of mensuration and calculation."

However, It is further submitted that Technical Assistant can be selected directly by the department. The procedure at the releant time to be followed by the department was that to call for the names from the Employment Exchange of the candidates having age not more than 25 years and having passed the S.S.C. Examination or an equivallent Examination recognised by Government and having a fair knowledge of estimating levelling and surveying for the appointment on the post of Technical Assistant. The candidate so selected through the regular recruitment channel was also bound to undergo 9 months training as prescribed by the Government. There is nothing on record to show that petitioner was ever sent for such training, but the fact remains that he was appointed as Technical Assistant out of turn and his name was not sent to the department through Employment

Exchange. So, the appointment of the petitioner cannot be said to be an appointment through regular recruitment procedure for direct recruitment of the candidate for the post of Technical Assistant.

6. I have considered the rival contentions of the parties. I am in agreement with the submissions of ld. counsel Mr. Supehia that alleged wrong, if is an irregularity, the department does not have post of Computor today and if the petitioner is to be reverted to the post of Computor, then such contingency would render the petitioner jobless or the department shall have to absorb the petitioner on some other post of clerical cadre or technical cadre with due protection. Mr.Bhatt, ld. counsel appearing for respondent no.3 has clarified that the department does not have cadre of Computor and the present petitioner is working as a Technical Assistant. He can be continued as Technical Assistant if he is not to be terminated for the irregular appointment on the post of Technical Assistant. In view of silence on the part of respondents qua the averments made in para-15 of the petition wherein the petitioner has named around six persons who have been regularised by the departemnt in special reference to the ratio of the decision of ths Court (Coram : A.P. Ravani,J) dated 4.4.1988 in Spl.Civil Application No. 4266/86, this petition also needs to be allowed substantially. I would like to quote relevant observations made in the aforesaid decision as under :-

" Now after a period of about 5 to 6 years, their services are sought to be terminated on the ground that they were not called through employment exchange. The policy to call for the names from the employment exchange is really good and should be followed as far as possible. But that does not mean that persons like petitioners who have been appointed before 5 to 6 years should be made victim of some irregularity committed by certain officer of the respondents. The petitioners were not at fault for the aforesaid irregularity. It is not the case of the responsdent that petitioners made misrepresentation and got their employment. Nor it is the case of the respondents that petitioners were appointed by some government officer knowingly with a vaiew to favour them. This appears to be a case of banafide mistake. Petitioners should not be made to suffer on account of such mistake for which they are not responsible."

7. Prior to the appointment to the post of Technical Assistant, the petitioner had served the department as Computor till 15.10.1976 i.e. for about 7 to 8 years. It is possible that considering the nature of work entrusted to the petitioner, immediate superior dealing with the appointment of Technical Assistant in the department, might have accepted the application of the petitioner to appoint him to the post of Technical Assistant. Appointment of the petitioner may be irregular as he has not been appointed through direct recruitment procedure and there is nothing on record to show whether the petitioner had any experience of estimating , levelling or surveying. But this Court has reason to believe that after appointment, he must have been sent to undergo training prescribed by the government, otherwise he could not have been further promoted to the post of Addl. Assistant Engineer or any time he, and on reversion, could not have been offered the post of Overseer in the department. When a person has served with department with all sincerity and competency and when there is no adverse against him, the department can still consider the case of the petitioner for regularisation on the post of Technical Assistant and petitioner can be directed to file representation to the department for regularisatin of his services on the post of Technical Assistant as it is not possible for the department to revert him on the post of Computor in absence of such post with the department. The department can also be directed to deal with and decide such representation within a reasonable period of time. Correspondence between the department and the Govt. Annex.K to Annex.P is very relevant. These documents ought to have been considered in true perspective of law as well as facts. It is further submitted that the petitioner also intends to leave the department by opting Voluntary Retirement Scheme.

8. Under the circumstances, the petition is allowed. The impugned order dated 5.6.2000 (Annex.F) and dated 10.11.1987 (Annex.E) are hereby quashed and set aside. It is further directed that the petitioner shall make representation to the respondents for regularising his services on the post of Technical Assistant in absence of cadre of Computor in the department to avoid termination. The petitioner shall state details of other employees whose services have been regularised by the department/or Government though their appointments were irregular as referred to in para-15 of the petition along with the copies of the orders and copy of the decision of this Court (Coram: A.P. Ravani,J) dt; 4.4.1988 in Spl.C.A.

No. 4266/1986. The petitioner shall make such representation at the earliest and within two weeks from today. On receipt of such representation, the respondents shall decide the same at the earliest and preferably within 4 (four) weeks from the date of receipt of such representation. It is clarified that regularisation of the petitioner only on the count of this decision, would not make him entitled for any further promotional avenue or benefits. It is further observed that in the event of failure, the petitioner will be at liberty to revive this petition or can file fresh petition.

9. Ld. counsel Mr. Supehia for the petitioner states that the petitioner is at present serving with respondent no.3 and is regularly receiving salary and other benefits.

10. Subject to aforesaid observations and directions, petiton is allowed. Rule is made absolute accordingly. No costs.

6.10.2001 [C.K. BUCH, J]
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